

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

GARY MICHAEL MCNEIL,

Plaintiff,

v.

Civil Action No. 2:16-CV-09399

NANCY A. BERRYHILL,

Acting Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending are plaintiff's request for judgment on the pleadings, filed on January 23, 2017, and defendant's request to affirm the decision of the Commissioner, filed on February 22, 2017. The action was previously referred to United States Magistrate Judge Omar J. Aboulhosen, pursuant to 28 U.S.C. § 636.

In the Proposed Findings and Recommendation ("PF&R"), filed on November 1, 2017, the magistrate judge recommends that the court reverse the Acting Commissioner's final decision and remand the claim for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). The magistrate judge explains

in detail how the administrative law judge ("ALJ")'s decision, which denied plaintiff Disability Insurance Benefits under Title II and Supplemental Security Income under Title XVI of the Social Security Act, contained a flawed analysis of plaintiff's physical conditions in step three of the disability determination, which involves a comparison of a claimant's conditions with impairments listed in the relevant regulations. PF&R at 20-25. In particular, the ALJ mischaracterized the medical evidence of the plaintiff's use of hand-held assistive devices and his need for assistance with daily living tasks. Neither plaintiff nor the Acting Commissioner has filed objections to the PF&R, thereby waiving de novo review by this court.

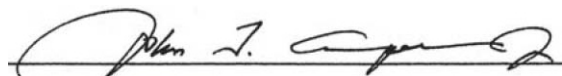
Accordingly, it is ORDERED as follows:

1. That the PF&R be, and it hereby is, adopted by the court and incorporated herein;
2. That plaintiff's request for judgment on the pleadings be, and it hereby is, denied except that his request is granted insofar as he requests a remand to the Acting Commissioner for further proceedings to correct the errors identified in the PF&R;

3. That the Acting Commissioner's request to affirm the decision of the Commissioner be, and it hereby is, denied; and
4. That the final decision of the Commissioner be, and it hereby is, reversed and that this claim be, and it hereby is, remanded to the Acting Commissioner for further proceedings pursuant to the fourth sentence of 42 U.S.C.A. § 405(g), which proceedings shall include a more thorough and proper step three analysis of the plaintiff's physical limitations, as more fully set forth in the PF&R.

The Clerk is directed to forward copies of this written opinion and order to Magistrate Judge Omar J. Aboulhosn, all counsel of record, and any unrepresented parties.

DATED: February 26, 2018



John T. Copenhaver, Jr.  
United States District Judge